

By: Representatives Aldridge, Bondurant,
Chism, Denny, Fillingane, Howell, Janus,
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Clark

To: Judiciary A

HOUSE BILL NO. 680
(As Sent to Governor)

1 AN ACT TO REVISE CERTAIN NONPROFIT CORPORATION PROVISIONS; TO
2 CREATE SECTION 79-11-336, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR
3 THE APPLICATION AND DISTRIBUTION OF THE ASSETS OF A NONPROFIT
4 CORPORATION; TO AMEND SECTION 79-11-337, MISSISSIPPI CODE OF 1972,
5 TO REVISE THE CONTENTS AND FILING OF ARTICLES OF DISSOLUTION; TO
6 AMEND SECTION 79-11-355, MISSISSIPPI CODE OF 1972, TO REVISE
7 CERTAIN DISSOLUTION PROVISIONS; TO AMEND SECTION 79-11-359,
8 MISSISSIPPI CODE OF 1972, TO REVISE THE APPOINTMENT OF RECEIVERS
9 OR CUSTODIANS; TO AMEND SECTION 79-11-503, MISSISSIPPI CODE OF
10 1972, TO PROVIDE FINAL REPORT REQUIREMENTS; TO AMEND SECTION
11 79-11-505, MISSISSIPPI CODE OF 1972, TO REVISE THE ANNUAL
12 CONTRIBUTION THRESHOLD; TO AMEND SECTION 79-11-507, MISSISSIPPI
13 CODE OF 1972, IN CONFORMITY; TO AMEND SECTION 79-11-509,
14 MISSISSIPPI CODE OF 1972, TO REVISE REGISTRATION SUSPENSION AND
15 REVOCATION PROVISIONS; TO AMEND SECTION 79-11-513, MISSISSIPPI
16 CODE OF 1972, TO REVISE REGISTRATION EXPIRATION PROVISIONS; TO
17 AMEND SECTION 79-11-517, MISSISSIPPI CODE OF 1972, IN CONFORMITY;
18 TO AMEND SECTION 79-11-519, MISSISSIPPI CODE OF 1972, TO REVISE
19 PROSECUTOR POWERS AND DUTIES; TO AMEND SECTION 79-11-521,
20 MISSISSIPPI CODE OF 1972, TO PROVIDE FOR INVESTIGATIONS; AND FOR
21 RELATED PURPOSES.

22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

23 **SECTION 1.** The following shall be codified as Section
24 79-11-336, Mississippi Code of 1972:

25 79-11-336. The assets of a corporation in the process of
26 voluntary dissolution pursuant to Section 79-11-333 or Section
27 79-11-335 shall be applied and distributed as follows:

28 (a) All liabilities and obligations of the corporation
29 shall be paid, satisfied and discharged; in case its property and
30 assets are not sufficient to satisfy or discharge all the
31 corporation's liabilities and obligations, the corporation shall
32 apply them so far as they will go to the just and equitable
33 payment of the liabilities and obligations.

34 (b) Assets held by the corporation upon condition
35 requiring return, transfer or conveyance, which condition occurs



by reason of the dissolution, shall be returned, transferred or conveyed in accordance with such requirements.

(c) If the corporation to be dissolved is a charitable organization, as defined in Section 79-11-501, the remaining assets shall be transferred to another charitable organization or other charitable organizations, as defined in Section 79-11-501, either domestic or foreign, engaged in activities substantially similar to those of the dissolving corporation, or to the federal government, or to a state or local government, for a public purpose. For all other nonprofit corporations, assets received and held by the corporation subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, educational or similar purposes, but not held upon a condition requiring return, transfer or conveyance by reason of the dissolution, shall be transferred or conveyed to one or more domestic or foreign corporations, societies or organizations engaged in activities substantially similar to those of the dissolving corporation.

(d) Other assets not described above, if any, shall be distributed in accordance with the provisions of the articles of incorporation or the bylaws to the extent that the articles of incorporation or bylaws determine the distributive right of members, or any class or classes of members, or provide for distribution to others.

SECTION 2. Section 79-11-337, Mississippi Code of 1972, is amended as follows:

79-11-337. (1) At any time after dissolution is authorized, the corporation may dissolve by delivering to the Secretary of State articles of dissolution setting forth:

- (a) The name of the corporation;
- (b) The date dissolution was authorized;
- (c) A statement that dissolution was approved by a sufficient vote of the board;



69 (d) That all debts, obligations and liabilities of the
70 corporation have been paid and discharged or that adequate
71 provision has been made therefor;

72 (e) That all remaining property and assets of the
73 corporation have been distributed among its members in accordance
74 with their respective rights and interest, or have been otherwise
75 distributed pursuant to the articles or bylaws of the corporation;
76 or, in the case of a corporation which is also a charitable
77 organization, as defined in Section 79-11-501, that the remaining
78 property and assets of the corporation have been transferred to
79 another charitable organization or other charitable organizations,
80 as defined in Section 79-11-501, either domestic or foreign,
81 engaged in activities substantially similar to those of the
82 dissolving corporation, or to the federal government, or to a
83 state or local government, for a public purpose;

84 (f) If approval of members was not required, a
85 statement to that effect and a statement that dissolution was
86 approved by a sufficient vote of the board of directors or
87 incorporators;

88 (g) If approval by members was required:

89 (i) The designation, number of memberships
90 outstanding, number of votes entitled to be cast by each class
91 entitled to vote separately on dissolution, and number of votes of
92 each class indisputably voting on dissolution; and

93 (ii) Either the total number of votes cast for and
94 against dissolution by each class entitled to vote separately on
95 dissolution or the total number of undisputed votes cast for
96 dissolution by each class and a statement that the number cast for
97 dissolution by each class was sufficient for approval by that
98 class.

99 (2) A corporation is dissolved upon the effective date of
100 its articles of dissolution.



101 **SECTION 3.** Section 79-11-355, Mississippi Code of 1972, is
102 amended as follows:

103 79-11-355. (1) The chancery court of the county where the
104 corporation's principal office (or, if none in this state, its
105 registered office) is located may dissolve a corporation:

106 (a) In a proceeding by the Attorney General or the
107 Secretary of State if it is established that:

108 (i) The corporation obtained its articles of
109 incorporation through fraud; * * *

110 (ii) The corporation has continued to exceed or
111 abuse the authority conferred upon it by law; or

112 (iii) If the corporation is a charitable
113 organization, as defined in Section 79-11-501, that:

114 1. The corporate assets are being misapplied
115 or wasted;

116 2. The corporation is unable to carry out its
117 purpose(s); or

118 3. The corporation has violated the laws
119 regulating the solicitation of charitable contributions, Section
120 79-11-501 et seq.

121 (b) In a proceeding by fifty (50) members or members
122 holding five percent (5%) of the voting power, whichever is less,
123 or by a director if it is established that:

124 (i) The directors are deadlocked in the management
125 of the corporate affairs, and the members, if any, are unable to
126 breach the deadlock;

127 (ii) The directors or those in control of the
128 corporation have acted, are acting or will act in a manner that is
129 illegal, oppressive or fraudulent;

130 (iii) The members are deadlocked in voting power
131 and have failed, for a period that includes at least two (2)
132 consecutive annual meeting dates, to elect successors to directors
133 whose terms have, or would otherwise have, expired; or



(iv) The corporate assets are being misapplied or wasted;

(c) In a proceeding by a creditor if it is established that:

(i) The creditor's claim has been reduced to judgment, the execution on the judgment returned unsatisfied and the corporation is insolvent; or

(ii) The corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent; or

(d) In a proceeding by the corporation to have its voluntary dissolution continued under court supervision.

(2) Prior to dissolving a corporation, the court shall consider whether there are reasonable alternatives to dissolution.

SECTION 4. Section 79-11-359, Mississippi Code of 1972, is amended as follows:

79-11-359. (1) A court in a judicial proceeding brought to dissolve a corporation shall have the power to issue injunctions and may appoint one or more receivers to wind up and liquidate, or one or more custodians to manage, the affairs of the corporation. The court shall hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or custodian. The court appointing a receiver or custodian has exclusive jurisdiction over the corporation and all of its property wherever located.

(2) The court may appoint an individual or a domestic or foreign business or nonprofit corporation (authorized to transact business in this state) as a receiver or custodian. The court may require the receiver or custodian to post bond, with or without sureties, in an amount the court directs.

(3) The court shall describe the powers and duties of the receiver or custodian in its appointing order, which may be amended from time to time. Among other powers:



167 (a) The receiver (i) may dispose of all or any part of
168 the assets of the corporation wherever located, at a public or
169 private sale, if authorized by the court; provided, however, that
170 the receiver's power to dispose of the assets of the corporation
171 is subject to any trust and other restrictions that would be
172 applicable to the corporation; and (ii) may sue and defend in the
173 receiver's or custodian's name as receiver or custodian of the
174 corporation in all courts of this state;

175 (b) The custodian may exercise all of the powers of the
176 corporation, through or in place of its board of directors or
177 officers, to the extent necessary to manage the affairs of the
178 corporation in the best interests of its members and creditors.

179 (4) The court during a receivership may redesignate the
180 receiver a custodian, and during a custodianship may redesignate
181 the custodian a receiver, if doing so is in the best interests of
182 the corporation, its members and creditors.

183 (5) The assets of the corporation or the proceeds resulting
184 from a sale, conveyance or other disposition thereof shall be
185 applied and distributed as the court may order, after taking into
186 account the following standards:

187 (a) All costs and expenses of the court proceedings and
188 all liabilities and obligations of the corporation shall, to the
189 extent that unencumbered assets are available therefor, be paid
190 first toward the payment of costs and expenses of the court
191 proceedings, and then toward other liabilities and obligations of
192 the corporation.

193 (b) All liabilities and obligations of the corporation
194 shall be paid, satisfied and discharged; in case its property and
195 assets are not sufficient to satisfy or discharge all the
196 corporation's liabilities and obligations, the court shall apply
197 them so far as they will go to the just and equitable payment of
198 the liabilities and obligations.



199 (c) Assets held by the corporation upon condition
200 requiring return, transfer or conveyance, which condition occurs
201 by reason of the dissolution or liquidation, shall be returned,
202 transferred or conveyed in accordance with such requirements.

203 (d) If the corporation to be dissolved is a charitable
204 organization, as defined in Section 79-11-501, the remaining
205 assets shall be transferred to another charitable organization or
206 other charitable organizations, as defined in Section 79-11-501,
207 either domestic or foreign, engaged in activities substantially
208 similar to those of the dissolving corporation, or to the federal
209 government, or to a state or local government, for a public
210 purpose. For all other nonprofit corporations, assets received
211 and held by the corporation subject to limitations permitting
212 their use only for charitable, religious, eleemosynary,
213 benevolent, educational or similar purposes, but not held upon a
214 condition requiring return, transfer or conveyance by reason of
215 the dissolution, shall be transferred or conveyed to one or more
216 domestic or foreign corporations, societies or organizations
217 engaged in activities substantially similar to those of the
218 dissolving corporation as the court may direct.

219 (e) Other assets, if any, shall be distributed in
220 accordance with the provisions of the articles of incorporation or
221 the bylaws to the extent that the articles of incorporation or
222 bylaws determine the distributive right of members, or any class
223 or classes of members, or provide for distribution to others.

224 (f) Any remaining assets may be distributed to such
225 persons, societies, organizations or domestic or foreign
226 corporations, whether for profit or not for profit, specified in
227 the plan of distribution adopted as provided in this chapter, or
228 where no plan of distribution has been adopted, as the court may
229 direct.

230 **SECTION 5.** Section 79-11-503, Mississippi Code of 1972, is
231 amended as follows:



79-11-503. (1) Except as otherwise provided in Section 79-11-505 and prior to any solicitation of contributions, every charitable organization as defined in Section 79-11-501 which solicits or intends to solicit contributions by any means whatsoever shall file a registration statement with, and pay a filing fee of Fifty Dollars (\$50.00) to, the Secretary of State. A registration statement that contains false, misleading, deceptive or incomplete information or documentation shall not be considered sufficient. The registration statement shall be on forms prescribed by the Secretary of State and shall contain the following information and such other information that the Secretary of State may require by rule:

(a) The name of the organization and the name or names under which it intends to solicit contributions;

(b) The names and addresses of the officers, directors, trustees and chief executive officer of the organization;

(c) The addresses of the organization and any offices in this state. If the organization does not maintain a principal office, the name and address of the person having custody of its financial records;

(d) Where and when the organization was legally established, the form of its organization and its tax exempt status;

(e) The purpose for which the organization and the purpose or purposes for which the contributions to be solicited will be used;

(f) The date on which the fiscal year of the organization ends;

(g) Whether the organization is authorized by any other governmental authority to solicit contributions and a statement of

(i) whether the charitable organization or any of its present officers, directors, executive personnel or trustees have ever had a license or registration denied, suspended, revoked or enjoined



by any court or other governmental authority in this state or any other state, or (ii) whether the charitable organization has voluntarily entered into an assurance or voluntary discontinuance or agreement with any jurisdiction or federal agency or officer;

(h) The names and addresses of any professional fund-raisers or fund-raising counsel who are acting or have agreed to act on behalf of the organization;

(i) Methods by which solicitation will be made;

(j) Copies of contracts between charitable organizations and professional fund-raisers or fund-raising counsel relating to financial compensation or profit to be derived by the professional fund-raisers or fund-raising counsel. If any such contract is executed after filing of a registration statement, a copy thereof shall be filed within ten (10) days of the date of execution;

(k) The board, group or individual having final authority over the distribution, custody and use of contributions received;

(l) A financial report as required by Section 79-11-507;

(m) With the initial registration only, a copy of the current charter, articles of incorporation, agreement of association, instrument of trust, constitution, or other organizational instrument and a copy of the bylaws of the charitable organization; and

(n) With the initial registration or, if after registration, within thirty (30) days after its receipt, a copy of any federal tax exemption determination letter, any correspondence rescinding the charitable organization's tax exempt status, or any notification from the Internal Revenue Service of any challenge to or investigation of the charitable organization's continued entitlement to federal tax exemption.



297 (2) The registration statement shall be signed and sworn to
298 under penalties of perjury by the president or other authorized
299 officer and the chief fiscal officer of the organization.

300 (3) The Secretary of State shall issue a certificate of
301 registration to a charitable organization once the Secretary of
302 State determines that such organization has complied with all
303 provisions of this chapter. No charitable organization required
304 to be registered under this section shall solicit funds without a
305 valid certificate of registration.

306 (4) Such registration shall remain in effect for one (1)
307 year, unless renewed by the filing of forms as prescribed by the
308 Secretary of State and upon payment of the Fifty Dollars (\$50.00)
309 renewal fee.

310 (5) Every registered organization shall notify the Secretary
311 of State within thirty (30) days of any change in the information
312 required to be furnished by such organization under Sections
313 79-11-501 through 79-11-529.

314 (6) In no event shall a registered charitable organization
315 continue to solicit contributions in or from this state after the
316 date such organization should have filed, but failed to file, a
317 renewal and the financial report in accordance with the
318 requirements of Sections 79-11-501 through 79-11-529.

319 (7) If any local, county or area division of a charitable
320 organization is supervised and controlled by a superior or parent
321 organization, incorporated, qualified to do business, or doing
322 business within this state, such local, county or area division
323 shall not be required to register under this section if the
324 superior or parent organization files a registration statement on
325 behalf of the local, county or area division in addition to or as
326 part of its own registration statement. If a registration
327 statement has been filed by a superior or parent organization as
328 provided in Section 79-11-503(1), it shall file the annual report
329 required under Section 79-11-507 on behalf of the local, county or



area division in addition to or as part of its own report, but the accounting information required under Section 79-11-507 shall be set forth separately and not in consolidated form with respect to every local, county or area division which raises or expends more than Twenty-five Thousand Dollars (\$25,000.00).

(8) Any registered charitable organization which for any reason opts not to renew its registration must, upon the expiration of its registration, provide to the Secretary of State a final report including the following, in addition to such other information the Secretary of State may require by rule:

(a) For domestic charitable organizations which have dissolved pursuant to the Mississippi Nonprofit Corporation Act;

(i) All financial statements and reports required by Section 79-11-507;

(ii) Articles of dissolution and certified minutes reflecting the dissolution;

(iii) A list of officers and trustees of the corporation, including their addresses and telephone numbers; and

(iv) A statement signed by an officer of the corporation providing details of the final distribution of assets.

(b) For all other charitable organizations, foreign or domestic, which opt not to renew for any other reason:

(i) All financial statements and reports required by Section 79-11-507; and

(ii) A statement signed by an officer of the charitable organization certifying that the organization has ceased charitable solicitations within the state.

SECTION 6. Section 79-11-505, Mississippi Code of 1972, is amended as follows:

79-11-505. (1) The registration provisions of Sections 79-11-503 and the reporting provisions of Section 79-11-507 shall not apply to the following organizations:



(a) All educational institutions that are recognized by the State Board of Education or that are accredited by a regional accrediting association or by an organization affiliated with the National Commission on Accrediting, any foundation having an established identity with any of the aforementioned educational institutions, any other educational institution which makes the solicitation of contributions solely by its student body, alumni, faculty and trustees and their families or a library established under the laws of this state.

(b) Fraternal, patriotic, social, educational, alumni organizations and historical societies when solicitation of contributions is made solely by their membership; however, posts of the American Legion and posts of the Veterans of Foreign Wars of the United States may utilize nonmembers to assist designated supervisors in the conduct of bingo under the Charitable Bingo Law and qualify for this exemption. This exemption shall be extended to any subsidiary of a parent or superior organization if such solicitation is made solely by the membership of the subsidiary, parent or superior organization.

(c) Persons requesting any contributions for the relief or benefit of any individual, specified by name at the time of the solicitation, if the contributions collected are turned over to the named beneficiary, first deducting reasonable expenses for costs of banquets or social gatherings, if any, provided all fund-raising functions are carried on by persons who are unpaid, directly or indirectly, for such services.

(d) Any charitable organization which does not intend to solicit and receive and does not actually receive contributions in excess of Twenty-five Thousand Dollars (\$25,000.00) during any twelve-month period ending June 30 of any year or on such other date as prescribed by rule, provided all of its fund-raising functions are carried on by persons who are unpaid for such services. However, if the gross contributions received by such



395 charitable organization during any twelve-month period ending June
396 30 of any year or other date as prescribed by rule shall be in
397 excess of Twenty-five Thousand Dollars (\$25,000.00) it shall,
398 within thirty (30) days after the date it shall have received
399 total contributions in excess of Twenty-five Thousand Dollars
400 (\$25,000.00), register with and report to the Secretary of State
401 as required by this chapter.

402 (e) Any charitable organization receiving an allocation
403 from an incorporated community chest or united fund, provided such
404 chest or fund is complying with the provisions of Sections
405 79-11-501 through 79-11-529 relating to registration and filing of
406 annual reports with the Secretary of State, and provided such
407 organization does not actually receive, in addition to such
408 allocation, contributions in excess of Twenty-five Thousand
409 Dollars (\$25,000.00) during any twelve-month period ending June 30
410 of any year or such other date as prescribed by rule, and provided
411 further, that all the fund-raising functions of such organization
412 are carried on by persons who are unpaid for such services.
413 However, if the gross contributions other than such allocation
414 received by such charitable organization during any twelve-month
415 period ending June 30 of any year or on such other date as
416 prescribed by rule shall be in excess of Twenty-five Thousand
417 Dollars (\$25,000.00), it shall, within thirty (30) days after the
418 date it shall have received such contributions in excess of
419 Twenty-five Thousand Dollars (\$25,000.00), register with and
420 report to the Secretary of State as required by this chapter.

421 (f) All volunteer fire departments or rescue units,
422 rural or otherwise, chartered under the laws and statutes of the
423 State of Mississippi as nonprofit corporations.

424 (g) Any humane society organized under the laws of
425 Mississippi which contracts with counties or municipalities for
426 the care and keeping of estrays.



(h) Any other organization which the Secretary of State by rule or order exempts from the registration requirements of this chapter upon finding that (i) such registration is neither necessary in the public interest nor for the protection of contributors, or (ii) such exemption shall further the objectives of compatibility with uniformity among the states.

(2) Prior to any solicitations for contributions, each charitable organization claiming to be exempt shall file a Notice of Exemption on the forms prescribed by the Secretary of State. In any proceeding under this chapter, the burden of proving an exemption, or an exception from a definition, is upon the person claiming it.

SECTION 7. Section 79-11-507, Mississippi Code of 1972, is amended as follows:

79-11-507. (1) Every charitable organization registered pursuant to Section 79-11-503 that shall receive in any fiscal year contributions in excess of Five Hundred Thousand Dollars (\$500,000.00) and all of whose fund-raising functions are carried on by persons who are unpaid for such services, and every charitable organization registered pursuant to Section 79-11-503 whose fund-raising functions are not carried on solely by persons who are unpaid for such services shall file a financial statement for its most recently completed fiscal year with the Secretary of State. The financial statement shall be filed along with the registration statement required by Section 79-11-503 and any renewals or final report thereafter. The financial statement shall include a balance sheet and statement of income and expense and shall be consistent with forms furnished by the Secretary of State clearly setting forth the following: gross receipts and gross income from all sources, broken down into total receipts and income from each separate solicitation project or source; cost of administration; cost of solicitation; cost of programs designed to inform or educate the public; total net amount disbursed or



dedicated for each major purpose, charitable or otherwise. The statement shall be signed by the president or other authorized officer and the chief fiscal officer of the organization, and shall be accompanied by an opinion signed by an independent certified public accountant that the financial statement therein fairly represents the financial operations of the organization in sufficient detail to permit public evaluation of its operations. The financial statement shall be accompanied by any and all forms required to be filed by a charitable organization with the United States Internal Revenue Service.

(2) Every organization registered pursuant to Section 79-11-503 that shall receive in any fiscal year contributions of at least Two Hundred Fifty Thousand Dollars (\$250,000.00) but not more than Five Hundred Thousand Dollars (\$500,000.00) and all of whose fund-raising functions are carried on by persons who are unpaid for their services shall file a financial statement reviewed by an independent certified public accountant along with the registration statement required by Section 79-11-503 and any renewals or final report thereafter with the Secretary of State upon forms prescribed by him. The reviewed financial statement shall cover the most recently completed fiscal year and include such information as required by the Secretary of State by rule or otherwise, including, but not limited to, the gross receipts from contributions and the use of the proceeds of such contributions. The statement shall be signed by the president or other authorized officer of the organization who shall certify under penalties of perjury that the statements therein are true and correct to the best of the signer's knowledge. The reviewed financial statement shall be accompanied by any and all forms required to be filed by a charitable organization with the United States Internal Revenue Service.

(3) Every organization registered pursuant to Section 79-11-503 that shall receive in any fiscal year contributions not



in excess of Two Hundred Fifty Thousand Dollars (\$250,000.00) and all of whose fund-raising functions are carried on by persons who are unpaid for their services shall file a financial report along with the registration statement required by Section 79-11-503 and any renewals or final report thereafter with the Secretary of State upon forms prescribed by him. Such financial report shall cover the most recently completed fiscal year and include such information as required by the Secretary of State by rule or otherwise, including, but not limited to, the gross receipts from contributions and the use of the proceeds of such contributions. The report shall be signed by the president or other authorized officer of the organization who shall certify under penalties of perjury that the statements therein are true and correct to the best of the signer's knowledge. Such financial report shall be accompanied by any and all forms required to be filed by a charitable organization with the United States Internal Revenue Service.

(4) Any charitable organization receiving more than Twenty-five Thousand Dollars (\$25,000.00) but less than Five Hundred Thousand Dollars (\$500,000.00) shall, at the request of the Secretary of State, submit additional financial information, including, but not limited to, an audited financial statement prepared in accordance with generally accepted accounting principles and accompanied by an opinion signed by an independent certified public accountant that the financial statement therein fairly represents the financial operations of the organization in sufficient detail to permit public evaluation of its operations.

(5) The Secretary of State pursuant to Section 79-11-509 may promulgate rules to provide for extensions of the due date for filing of the financial statements required by this chapter and may impose an administrative penalty against any organization which fails to comply with this section within the time



prescribed, or fails to furnish such additional information as is requested by the Secretary of State within the required time.

SECTION 8. Section 79-11-509, Mississippi Code of 1972, is amended as follows:

79-11-509. (1) The Secretary of State shall deny, suspend or revoke a registration or an exemption for the following reasons:

(a) The application for registration or renewal is incomplete.

(b) The application or renewal fee (where applicable) has not been paid.

(c) A document filed with the Secretary of State contains one or more false or misleading statements or omits material facts.

(d) The charitable contributions have not been or are not being applied for the purpose or purposes stated in the documents filed with the Secretary of State.

(e) The applicant or registrant has violated or failed to comply with any provisions of this chapter or any rule or order thereunder.

(f) Any applicant, registrant, officer, director, or partner of the applicant or registrant, or any agent or employee thereof who has been convicted of a felony or * * * a misdemeanor involving misrepresentation, misapplication or misuse of the money or property of another maintains a position where he or she has access to or control over the funds of the charitable organization.

(g) The applicant or registrant has engaged in the use or employment of dishonesty, fraud, deception, misrepresentation, false promise or false pretense.

(h) The applicant or registrant has had the authority to engage in charitable or fund-raising activities denied, revoked



or suspended by the Secretary of State or any other state or jurisdiction.

(i) The applicant or registrant has been convicted of any criminal offense committed in connection with the performance of activities regulated under Sections 79-11-501 through 79-11-529 or any criminal offense involving untruthfulness or dishonesty or any criminal offense relating adversely to the registrant's or applicant's fitness to perform activities regulated by Sections 79-11-501 through 79-11-529. For the purposes of this paragraph, a plea of guilty, non vult, nolo contendere or any other similar disposition of alleged criminal activity shall be deemed a conviction.

(j) Any applicant, registrant, officer, director, or partner of the applicant or registrant, or any agent, volunteer or employee thereof, who has been convicted under federal or state law of any criminal offense involving acts against children maintains a position where he or she is in close contact with children.

(k) Any officer, director, partner, employee, agent or volunteer has accrued three (3) or more unremediated citations issued by the Secretary of State pursuant to this section.

(l) The applicant or registrant has engaged in other forms of misconduct as may be determined by the rules adopted by the Secretary of State.

(2) The Secretary of State shall notify the applicant or licensee of his intent to deny, suspend or revoke a license. The notification shall contain the reasons for the action and shall inform him of his right to request an administrative hearing within thirty (30) days of receipt of the notification. The denial, suspension or revocation shall become effective thirty (30) days after receipt of the notification unless a request for an administrative hearing is received by the Secretary of State before the expiration of the thirty (30) days. If a hearing is



590 requested and the denial, suspension or revocation is upheld, the
591 denial, suspension or revocation shall become effective upon the
592 service of the final administrative decision on the applicant or
593 licensee.

594 (3) Registration shall become effective no later than noon
595 of the thirtieth day after a completed application is filed, if no
596 denial order is in effect and no proceeding is pending under this
597 chapter. The Secretary of State may, by rule or order, specify an
598 earlier effective date, and the Secretary of State may, by order,
599 defer the effective date until noon of the thirtieth day after the
600 filing of any amendment.

601 (4) Whenever it appears to the Secretary of State that any
602 person has engaged in or is about to engage in any act or practice
603 constituting a violation of any provision of this chapter or any
604 rule or order hereunder, he may, in his discretion, seek one or
605 more of the following remedies in addition to other remedies
606 authorized by law:

607 (a) Issue a cease and desist order, with or without a
608 prior hearing against the person or persons engaged in the
609 prohibited activities, directing them to cease and desist from
610 further illegal activity; * * *

611 (b) Administratively dissolve or seek the judicial
612 dissolution of a domestic corporation that is a charitable
613 organization, or revoke the certificate of authority of a foreign
614 corporation that is a charitable organization; or

615 (c) Issue an order * * * imposing an administrative
616 penalty up to a maximum of Twenty-five Thousand Dollars
617 (\$25,000.00) for each offense, each violation to be considered as
618 a separate offense in a single proceeding or a series of related
619 proceedings;

620 (d) For the purpose of determining the amount or extent
621 of a sanction, if any, to be imposed under paragraph (b) or (c) of
622 this section, the Secretary of State shall consider, among other



factors, the frequency, persistence and willfulness of the conduct constituting a violation of this chapter or a rule promulgated thereunder or an order of the Secretary of State, the number of persons adversely affected by the conduct, and the resources of the person committing the violation.

(5) In addition to the above remedies, the Secretary of State may issue a citation to any person engaging in any act or practice constituting a violation of any provision of this chapter or any rule or order hereunder. The Secretary of State shall establish rules providing remediation of certain citations, and the decision whether to allow such remediation will be within the Secretary of State's discretion.

(6) Whenever it appears to the Secretary of State or Attorney General that any person has engaged in or is about to engage in any act or practice constituting a violation of any provision of Sections 79-11-501 through 79-11-529 or any rule or order thereunder, either official may, in his discretion, take any or all of the following actions: bring an action in chancery court to obtain a temporary restraining order or injunction to enjoin the acts or practices and enforce compliance with Sections 79-11-501 through 79-11-529 or any rule or order thereunder; collect administrative penalties imposed under this section; or obtain on behalf of a charitable organization the return or repayment of any property or consideration received as private inurement or an excess benefit in violation of Section 79-11-519(3)(j). Upon a proper showing a permanent or temporary injunction, restraining order or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. In addition, upon a proper showing * * *, the court may enter an order of rescission, restitution or disgorgement directed to any person who has engaged in any act constituting a violation of any provision of Sections 79-11-501 through 79-11-529 or any rule or order thereunder. In



656 addition the court may impose a civil penalty up to a maximum of
657 Twenty-five Thousand Dollars (\$25,000.00) for each offense, and
658 each violation shall be considered as a separate offense in a
659 single proceeding or a series of related proceedings. The court
660 may not require the Secretary of State or Attorney General to post
661 a bond.

662 **SECTION 9.** Section 79-11-513, Mississippi Code of 1972, is
663 amended as follows:

664 79-11-513. No person shall act as a professional fund-raiser
665 or fund-raising counsel for a charitable organization before he
666 has registered with the Secretary of State or after the expiration
667 or cancellation of such registration or any renewal thereof.
668 Applications for registration and renewals shall be in writing
669 sworn to under penalties of perjury in the form prescribed by the
670 Secretary of State and accompanied by the filing of a fee of Two
671 Hundred Fifty Dollars (\$250.00). The professional fund-raiser
672 applicant, at the time of making application, shall file with the
673 State Treasurer and have approved by the Secretary of State a bond
674 in which the applicant shall be the principal obligor in the sum
675 of Ten Thousand Dollars (\$10,000.00) with one or more corporate
676 sureties licensed to do business in this state whose liability in
677 the aggregate will at least equal such sum. The bond shall run to
678 the Secretary of State for the use of the state and to any person
679 who may have a cause of action against the obligor of the bond for
680 any malfeasance or misfeasance in the conduct of such
681 solicitation; provided, that the aggregate limit of liability of
682 the surety to the state and to all such persons shall, in no
683 event, exceed the sum of such bond. Such limitation of liability,
684 as to the sum of the bond, as to the surety, shall not otherwise
685 affect any liability to any person by any charitable organization,
686 professional fund-raiser, professional solicitor or any other
687 person for a violation of this chapter. Registration when
688 effected shall be for a period of one (1) year, or a part thereof,



689 expiring on * * * June 30 or on such other date as prescribed by
690 rule and may be renewed upon written application, under oath, in
691 the form prescribed by the Secretary of State and upon the
692 remittance of the renewal fee of Two Hundred Fifty Dollars
693 (\$250.00) and the filing of the bond for additional one-year
694 periods. Every professional fund-raiser and fund-raising counsel
695 required to register pursuant to Sections 79-11-501 through
696 79-11-529 shall file an annual written report with the Secretary
697 of State containing such information and documentation as he may
698 require by rule.

699 **SECTION 10.** Section 79-11-517, Mississippi Code of 1972, is
700 amended as follows:

701 79-11-517. No person shall act as a professional solicitor
702 in the employ of a professional fund-raiser required to register
703 pursuant to Section 79-11-513 before he has registered with the
704 Secretary of State or after the expiration or cancellation of such
705 registration or any renewal thereof. Application for registration
706 or renewal shall be in writing sworn to under penalties of perjury
707 in the form prescribed by the Secretary of State. Such
708 registration when effected shall be for a period of one (1) year,
709 or a part thereof, expiring on * * * June 30 or such other date as
710 prescribed by rule, and may be renewed upon written application,
711 sworn to under penalties of perjury, in the form prescribed by the
712 Secretary of State for additional one-year periods.

713 **SECTION 11.** Section 79-11-519, Mississippi Code of 1972, is
714 amended as follows:

715 79-11-519. (1) It is the duty of the district attorneys and
716 county prosecuting attorneys of this state to prosecute all
717 violations of the provisions of Sections 79-11-501 through
718 79-11-529. In addition, actions for violations of Sections
719 79-11-501 through 79-11-529 may be prosecuted by the Attorney
720 General.



(2) Sections 79-11-501 through 79-11-529 shall not be construed to limit or restrict the exercise of the powers or the performance of the duties of the Attorney General which he otherwise is authorized to exercise or perform under any other provision of law by statute or otherwise except the rendering of interpretative opinions in accordance with Section 79-11-503 which shall be limited to the Secretary of State.

(3) It shall be a violation of Sections 79-11-501 through 79-11-529 for any person:

(a) To misrepresent:

(i) The purpose or beneficiary of a solicitation;

(ii) The purpose or nature of a charitable organization; or

(iii) That any other person sponsors or endorses a solicitation.

* * *

(b) To use or exploit the fact of registration so as to lead the public to believe that such registration constitutes an endorsement or approval by the state;

* * *

(c) To use the name of a charitable organization, or to display any emblem, device or printed matter belonging to or associated with a charitable organization without the express written permission of the charitable organization;

(d) To make any false or misleading statement on any document required by Sections 79-11-501 through 79-11-529 or any rule or order thereunder;

(e) To fail to comply with the requirements of Sections 79-11-501 through 79-11-529 or any rule or order thereunder;

(f) To commit any unfair or deceptive act or practice; to employ any device, scheme or artifice to defraud; to engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person; or to obtain money



754 or property by means of any false pretense, representation or
755 promise;

756 (g) To fail to provide complete and timely payment to a
757 charitable organization of the proceeds from a solicitation
758 campaign or a charitable sales promotion;

759 * * *

760 (h) To make any false or misleading statements in the
761 solicitations of contributions in this state or to omit to state
762 any fact necessary in order to make the statements made, in light
763 of the circumstances under which they are made, not misleading;

764 * * *

765 (i) To refuse or fail, after notice, to produce any
766 records required to be kept under Sections 79-11-501 through
767 79-11-529, or any rule or order promulgated thereunder;

768 (j) To benefit, directly or indirectly, from any
769 transaction in which an economic benefit is provided by a
770 charitable organization where the value of the benefit provided by
771 the organization exceeds the fair market value of the
772 consideration received by the organization.

773 * * *

774 (4) It shall be a violation of Sections 79-11-501 through
775 79-11-529 for any charitable organization:

776 (a) To engage in any financial transaction which is not
777 related to the accomplishment of a charitable purpose, or which
778 jeopardizes or interferes with the ability of the charitable
779 organization to accomplish a charitable purpose;

780 (b) To expend an unreasonable amount of money for
781 solicitation or management;

782 (c) To use the name which is the same as or confusingly
783 similar to the name of another charitable organization unless the
784 latter organization shall consent in writing to its use;

785 (d) To represent itself as being associated with
786 another charitable organization without the express written



787 acknowledgment and endorsement of such other charitable
788 organization;

789 (e) To use the services of an unregistered professional
790 fund-raiser or fund-raising counsel or professional
791 solicitor; * * *

792 (f) To fail to comply with any provisions of Sections
793 79-11-501 through 79-11-529 or any rule or order thereunder;

794 (g) To employ as an officer, director, partner,
795 employee, agent or volunteer, any person who has accrued three (3)
796 or more unremediated citations issued by the Secretary of State
797 pursuant to Section 79-11-509;

798 (h) To employ as an officer, director, partner,
799 employee or agent any person who has been convicted of a felony or
800 misdemeanor involving misrepresentation, misapplication or misuse
801 of the money or property of another, in a capacity where that
802 person has access to or control over the funds of the charitable
803 organization;

804 (i) To employ as an officer, director, partner,
805 employee, volunteer or agent any person who has been convicted
806 under federal or state law of any criminal offense involving acts
807 against children, where such position will bring the person into
808 close contact with children; or

809 (j) To apply the charitable organization's funds or
810 assets for private inurement or excess benefits which exceed the
811 fair market value of the property or services received in return
812 from directors, officers, or those persons who are deemed
813 disqualified persons or insiders under applicable federal law for
814 tax-exempt organizations.

815 (5) It shall be a violation of Sections 79-11-501 through
816 79-11-529 for any professional fund-raiser, professional
817 fund-raising counsel or any professional solicitor:

818 (a) To perform any services on behalf of an
819 unregistered charitable organization; or



820 (b) To fail to comply with any provisions of Sections
821 79-11-501 through 79-11-529 or any rule or order thereunder.

822 * * *

823 (6) It shall be a violation of Sections 79-11-501 through
824 79-11-529 for any person, in connection with a public safety
825 organization solicitation:

826 (a) To use any representation that implies that the
827 contribution is for or on behalf of a public safety agency or a
828 public safety organization, or using any emblem, device, or
829 printed matter belonging to or associated with a public safety
830 agency or organization, unless authorized in writing to do so by
831 the agency or organization;

832 (b) Using a name, symbol, or statement that is similar
833 to that used by a public safety agency or organization in a manner
834 that is intended to confuse or mislead a person being solicited;

835 (c) Representing or implying that the solicitor is a
836 peace officer or member of a public safety agency or public safety
837 organization if the solicitor is not;

838 (d) Soliciting for a public safety organization,
839 independent promoter, public safety publication, or cause by
840 representing that those who respond affirmatively to the
841 solicitation will receive favored treatment by public safety
842 personnel; or

843 (e) To fail to comply with any provisions of Sections
844 79-11-501 through 79-11-529 or any rule or order thereunder.

845 (7) A misrepresentation may be accomplished by words or
846 conduct or failure to disclose a material fact. Regardless of a
847 person's intent or the lack of injury, the above acts and
848 practices are prohibited in the planning, conduct or execution of
849 any solicitation or charitable sales promotion.

850 (8) The Secretary of State or the Attorney General may
851 exercise the authority granted in this section against any
852 charitable organization or person which or who operates under the



guise or pretense of being an organization exempted by the provisions of Section 79-11-505, and is not in fact an organization entitled to such an exemption.

SECTION 12. Section 79-11-521, Mississippi Code of 1972, is amended as follows:

79-11-521. Either the Secretary of State or Attorney General, in his discretion: (a) may make such public or private investigations within or outside of this state as deemed necessary by the Secretary of State or Attorney General to determine whether any person has violated or is about to violate any provision of this chapter or any rule or order hereunder, or to aid in the enforcement of Sections 79-11-501 through 79-11-529 or in the prescribing of rules and forms hereunder; (b) may require or permit any person to file a statement in writing, under oath or otherwise, as to all the facts and circumstances concerning the matter to be investigated; and (c) may publish information concerning any violation of Sections 79-11-501 through 79-11-529 or any rule or order hereunder.

For the purpose of any investigation or proceeding under Sections 79-11-501 through 79-11-529, the Secretary of State or Attorney General, or any designated officer may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the Secretary of State or Attorney General deems relevant or material to the inquiry.

SECTION 13. This act shall take effect and be in force from and after July 1, 2009.

